

## APPEAL NO. 010549

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 13, 2001. With respect to the issues before him, the hearing officer determined that the appellant/cross-respondent's (claimant) left hip replacement was not the result of a compensable injury; the claimant is not entitled to supplemental income benefits (SIBs) for the third or sixth quarters; and that the claimant is entitled to SIBs for the fourth and fifth quarters. The hearing officer's determination that the claimant's unemployment during the qualifying periods for the third, fourth, fifth, and sixth SIBs quarters was a direct result of the claimant's impairment from the compensable injury has not been appealed and has become final. The claimant appeals the hearing officer's decision, claiming that the portion of the hearing officer's decision that is adverse to him is against the great weight of the evidence. The respondent/cross-appellant (self-insured) also appeals on sufficiency grounds and requests that the decision and order on those issues decided against the self-insured be reversed and rendered in favor of the self-insured. The self-insured responds to the claimant's appeal, requesting affirmance on the issues on which it prevailed.

### DECISION

Affirmed in part, reversed and rendered in part.

On \_\_\_\_\_, the claimant sustained a compensable injury when the tractor-trailer rig in which he was a passenger was involved in a single-vehicle rollover collision. The claimant has asserted that he had also injured his hip which had to be replaced. The claimant testified that he complained of hip pain early on. The medical records pertaining to the causal relationship between the arthritic condition of the hip and the accident were conflicting.

The hearing officer determined that "[t]he left hip replacement is not the result of the compensable injury sustained on \_\_\_\_\_." The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). There was conflicting evidence presented at the hearing on the issue of causation of the hip injury. The hearing officer's determinations on that issue was not so against the great weight and preponderance of the evidence to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The claimant also asserted entitlement to SIBs for the third, fourth, fifth, and sixth quarters. The parties stipulated that the third quarter qualifying period was from January 11, 2000, to April 11, 2000; the fourth quarter qualifying period was from April 12, 2000,

to July 11, 2000; the fifth quarter qualifying period was from July 12, 2000, to October 10, 2000; and that the sixth quarter qualifying period was from October 11, 2000, to January 11, 2001. The claimant made no effort to seek employment during any of the qualifying periods, asserting a total inability to work.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). At issue in this case is whether the claimant has made a good faith effort to obtain employment commensurate with the his ability to work.

With regard to the good faith criterion for SIBs, Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

In regard to the narrative report, Texas Workers' Compensation Commission Appeal No. 000835, decided June 5, 2000, and Texas Workers' Compensation Commission Appeal No. 002192, decided October 27, 2000, held that the narrative report from the doctor must specifically explain how the compensable injury causes a total inability to work. See *also* Texas Workers' Compensation Commission Appeal No. 991616, decided September 15, 1999. Appeal No. 000835, *supra*, noted that the good faith, no-ability-to-work provision should be a limited situation and only applies where it is clear that the injured employee cannot return to work because of the compensable injury. The hearing officer determined "[Dr. W] provided narrative reports explaining Claimant's total inability to work, covering the period of January 11, 2000 through November 1, 2000." The hearing officer did not make any findings that a medical narrative explained how the compensable injury prevented the claimant from working.

In Texas Workers' Compensation Appeal No. 002724, decided January 5, 2001, the concurring opinion propounded by Appeals Panel Manager to determine what constitutes a narrative, we stated:

[t]o determine if the requirements of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) for a doctor's narrative report are met, the following will be considered:

- amendments;
- supplements, including contested case hearing testimony from the doctor;
- information incorporated in the report by reference; or

- information from a doctor's medical records in evidence that can be reasonably incorporated in the doctor's narrative report by inference based on some connection between the report and the information in the medical records.

The medical reports that the claimant and the hearing officer rely on to specifically explain how the compensable injury causes a total inability to work principally reference surgery and inability to work due to the hip surgery, which the hearing officer found was not part of the compensable injury. While there are various reports from physicians, the reports do not state specifically how the compensable injury prevents the claimant from working. Nor are there any amendments, supplements, or incorporated references, which specifically explain how the compensable injury, as opposed to the hip injury, causes a total inability to work and thus the hearing officer erred in determining that the claimant is entitled to SIBs for the fourth and fifth quarters as the requirement of Rule 130.102(d)(4) have not been met.

The hearing officer's decisions that the claimant's left hip replacement is not a result of the compensable injury sustained on \_\_\_\_\_, and that the claimant is not entitled to SIBs for the third and sixth quarters as not having met the requirements of Rule 130.102(d)(4), are affirmed. The hearing officer's decision that the claimant is entitled to SIBs for the fourth and fifth quarters is reversed and a new decision is rendered that the claimant is not entitled to SIBs for the fourth and fifth quarter.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge